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Paper No. None

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**MAR 04 2004**

In re Application of	:	<b>OFFICE OF PETITIONS</b>
Mark E. Steen et al.	:	
Application No. 10/619,088	:	DECISION ON PETITION
Filed: July 14, 2003	:	UNDER 37 C.F.R. §1.53(e)
Attorney Docket No. AMO0007	:	
Title: SYSTEM AND METHOD FOR	:	
MODULATED SURGICAL PROCEDURE	:	
IRRIGATION AND ASPIRATION	:	

This is a decision on the petition filed December 10, 2003<sup>1</sup>, requesting the application, including Figure eighteen (18) be accorded a filing date of July 14, 2003 as part of the original disclosure.

The application was deposited on July 14, 2003. However, on October 9, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice to File Missing Parts of Nonprovisional Application" (Notice), stating that the application had been accorded a filing date of July 14, 2003, and advising applicant that Figure eighteen (18) appeared to have been omitted. The Notice further indicated that the basic filing fee, an executed oath or declaration, and the fee associated with the late filing of an oath or declaration would be required. The Notice set a two-month period for reply.

In response, on December 10, 2003, applicants filed the present petition. The petition is further accompanied by a copy of twenty-two (22) sheets of drawings containing Figures one through twenty-two (1-22), the basic filing fee, fees associated with the filing of additional claims, the fee associated with the late filing of an oath or declaration, and a declaration. Petitioner has also submitted a copy of applicants' postcard receipt which properly itemizes the drawings as "Drawings: # of Sheets - 22," as well as a copy of the certificate of mailing which sets forth that "22 sheets of informal

<sup>1</sup> The petition contains a certificate of mailing dated December 8, 2003.

drawings...are being deposited in the United States Postal Service 'Express Mail Post Office to Addressee' service...on...7/14/03."

Regarding the postcard receipt, it is noted that it does not bear a date stamp from OIPE. As such, it cannot be relied upon as evidence that Figure eighteen (18) was included on filing<sup>2</sup>.

Regarding the certificate of mailing, 37 C.F.R. §1.8(a)(2)(i)(A) explicitly removes "the filing of a national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date" from certificate of mailing practice. As such, a certificate of mailing cannot be used to obtain a filing date for a figure which was purportedly included on filing.

As such, the petition is DISMISSED.

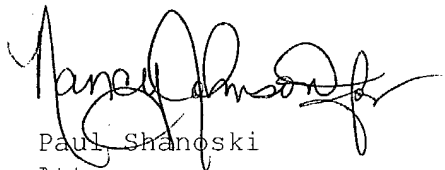
The drawing sheet received with the instant petition containing Figure eighteen (18) will not be entered. If petitioner desires for the examiner to enter this drawing sheet, which was not submitted as part of the original disclosure, then petitioner may submit this page via an amendment. Any such amendment will, of course, be reviewed by the examiner for new matter<sup>3</sup>. The amendment is not new matter if the substance was a part of the disclosure of the prior application.

The original application papers will include only those application papers present on the date of deposit.

The petition fee of \$130.00 will not be refunded, as this petition was not necessitated by any error on the part of the Office.

The Application is being returned to the Office of Initial Patent Examination for further processing, using only the application papers filed on that date.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 305-0011.



Paul Shanowski  
Attorney  
Office of Petitions  
United States Patent and Trademark Office

<sup>2</sup> MPEP §503 sets forth "A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." (emphasis added)

<sup>3</sup> See MPEP §608.02(a).